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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,248	11/12/2003	Jeffrey Alan Middlesworth	44904.000751	3193

21967 7590 03/23/2006

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WASHINGTON, DC 20006-1109

EXAMINER
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RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

007

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,248	<b>Applicant(s)</b> MIDDLESWORTH ET AL.	
	<b>Examiner</b> Ula C. Ruddock	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.  
     4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed December 27, 2005.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on December 28, 2005, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/945104 has been reviewed and is accepted. The terminal disclaimer has been recorded.
4. The terminal disclaimer filed on December 28, 2005, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/807409 has been reviewed and is NOT accepted.
5. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:  
  
The application/patent being disclaimed has been improperly identified since the filing date of the Application being disclaimed is incorrect. The correct filing date is March 24, 2004.

### ***Double Patenting***

6. Claims 20-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 5, 6, 30, and 31 of copending Application No. 10/807409. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102/103***

7. Claims 20-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moore et al. (US 6,114,595). Moore et al. disclose a stretchable, extensible, fluid pervious composite web comprising an apertured three-dimensional formed film layer and a nonwoven fibrous layer. The composite web is microcreped such that the composite exhibits extensibility. The webs are suited for use as a topsheet in an absorbent article (abstract). The topsheet includes an apertured formed film of a polymeric material (col 7, ln 56-57). The second topsheet layer comprises a nonwoven web that is inherently extensible (col 10, ln 15). The preferred bonding method is point thermal bonding (col 10, ln 32-33).

Although Moore et al. do not explicitly teach that the perforated elastic layer has an elongation to break of at least 50% and that the nonwoven layer has a crepe induced extensibility of at least 25%, it is reasonable to presume that these properties are inherent to the Moore et al. invention. Support for said presumption is found in the use of like materials (i.e. apertured film, extensible nonwoven fabric, and adhesive spot bonds). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of the perforated elastic layer having an elongation to break of at least 50% and the nonwoven layer having a crepe induced extensibility of at least 25%, would obviously have been present once the Moore et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

***With regard to Applicant's newly added amendment that the elastic layer is bonded to "high points" of the extensible, nonwoven layer, Moore discloses that the layers are bonded to one another via adhesive bonding, including by a patterned layer of adhesive or an array of spots of adhesive (col 10, ln 17-22). Furthermore, it is the Examiner's position that in the final product, once heat and pressure have been applied to the laminate, one having ordinary skill in the art would not know the difference as to whether the adhesive is on the "high points" or the "low points" of the nonwoven layer.***

***Rejection is maintained.***

***Claim Rejections - 35 USC § 103***

8. Claims 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo (US 6,106,925) in view of Morman et al. (US 2004/0102125). Palumbo discloses a coversheet that is elastic and has perforations which extend therethrough. The coversheet has an upper layer including a nonwoven material intended to face outwardly of the absorbent body, an intermediate layer including an elastic film, and a lower layer including a nonwoven material. The topsheet is elastic (col 2, ln 23). The film is perforated (col 3, ln 37-40). Palumbo discloses the claimed invention except for the teaching that an adhesive is used on the "high points" of the nonwoven layer to bond the nonwoven layer to the elastic perforated layer.

Morman et al. (US 2004/0102125) disclose an extensible laminate of a nonwoven layer and an elastomeric film and an adhesive layer there between. The extensible nonwoven material is selectively attached to the elastomeric film by a plurality of intermittent adhesive bonds (abstract). The adhesive is applied in a random and/or discontinuous pattern [0082] or via adhesive dots

[0083]. It would have been obvious to have used Morman's adhesive dots to bond Palumbo's perforated film and nonwoven layers. Furthermore, it is the Examiner's position that in the final product, once heat and pressure have been applied to the laminate, one having ordinary skill in the art would not know the difference as to whether the adhesive is on the "high points" or the "low points" of the nonwoven layer.

Although Palumbo and Morman et al. do not explicitly teach that the perforated elastic layer has an elongation to break of at least 50% and that the nonwoven layer has a crepe induced extensibility of at least 25%, it is reasonable to presume that these properties are inherent to the Palumbo invention. Support for said presumption is found in the use of like materials (i.e. apertured film and elastic nonwoven fabric and adhesive spot bonds). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of the perforated elastic layer having an elongation to break of at least 50% and the nonwoven layer having a crepe induced extensibility of at least 25%, would obviously have been present once the Palumbo and Morman et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

### ***Response to Arguments***

9. Applicant's arguments filed December 27, 2005, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Moore cannot have bonding to the high points of the nonwoven layer. This argument is not persuasive because Moore specifically discloses that the layers can be bonded to one another via adhesive bonding, which can be by a pattern of adhesive or spots of adhesive (col 10, ln 17-22). Applicant also argues that Moore's use

of thermal bonding, and the resulting creation of any bonds is before any creping is done. This argument is not commensurate in scope because the claims, as presently written, do not require that the bonds be formed before any creping is done. Applicant's arguments regarding the Palumbo reference are moot in view of the new rejection. Therefore, the rejections are maintained.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Greenway et al. (US 4,606,338) disclose a nonwoven fabric having a light coat of adhesive applied to the crests of the fabric (abstract).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *hcr*

*Ula Ruddock*  
**ULA RUDDOCK**  
**PRIMARY EXAMINER**